

LINDSAY

IN THE CIRCUIT COURT OF WASHINGTON COUNTY, ARKANSAS
CIVIL DIVISION

ANITA DAVIS, for Herself and
All Others Similarly Situated

PLAINTIFFS

CASE NO. CV09 1760-6

WASHINGTON CO. AR
CIRCUIT CLERK
B. STAMPS

2009 JUN -2 AM 9:40

FILED FOR RECORD
2

CITY OF SPRINGDALE, ARKANSAS,
MIKE OVERTON, Individually and as
Member of Springdale City Council,
JIM REED, Individually and as
Member of Springdale City Council,
BOBBY STOUT, Individually and as
Member of Springdale City Council, and
JEFF WATSON, Individually and as
Member of Springdale City Council

DEFENDANTS

COMPLAINT FOR ILLEGAL EXACTION

COMES NOW the Plaintiffs, Anita Davis, for Herself and all Others Similarly Situated, by and through their attorney, Brian L. Campbell, Davis & Associates, P.A., and for their cause of action against the Defendants, City of Springdale, Arkansas, Mike Overton, Individually and as Member of Springdale City Council, Jim Reed, Individually and as Member of Springdale City Council, Bobby Stout, Individually and as Member of Springdale City Council, and Jeff Watson, Individually and as Member of Springdale City Council, would state and allege as follows:

I. JURISDICTION AND VENUE

1. Plaintiff Anita Davis is a resident, citizen and taxpayer of the City of Springdale, Washington County, Arkansas.

2. Defendant City of Springdale, Arkansas is a municipal corporation, organized under the laws of the State of Arkansas, located in Washington County, Arkansas.

3. Defendant Mike Overton is a Member of the Springdale City Council, yet is named herein both in his individual and official capacity.

4. Defendant Jim Reed is a Member of the Springdale City Council, yet is named herein both in his individual and official capacity.

5. Defendant Bobby Stout is a Member of the Springdale City Council, yet is named herein both in his individual and official capacity.

6. Defendant Jeff Watson is a Member of the Springdale City Council, yet is named herein both in his individual and official capacity.

7. Jurisdiction and venue are proper in this Court.

II. CLASS ACTION

8. Plaintiffs bring this case on behalf of citizens and taxpayers of the City of Springdale, Washington County, Arkansas, under Art. 16, § 13 of the Constitution of Arkansas; therefore this case is a class action as a matter of law.

9. The Plaintiffs' class definition is as follows:

All citizens and taxpayers of the City of Springdale, Washington County, Arkansas, who contributed to the general treasury thereof since June 2, 2006.

10. The names and addresses of the class members are not known and not readily available for individual notice; therefore the Plaintiff class should be given the

best notice practicable, which is by publication in a newspaper of general circulation in Washington County, Arkansas.

III. STATEMENT OF FACTS

11. On or about November 27, 2006, the City of Springdale entered into an insurance contract with Arkansas Blue Cross/ Blue Shield to provide health insurance for employees of the City of Springdale beginning on January 1, 2007. A true and correct copy of the Insurance Contract is attached hereto and incorporated herein as Exhibit A.

12. Prior to January 1, 2007, health insurance for employees of the City of Springdale was provided by the Arkansas Municipal League.

13. Pursuant to the City of Springdale's Personnel and Procedures Manual, the insurance coverage provided according to these insurance contracts is made available to "all regular employees who work an average of 30 hours or more per week." A true and correct copy of "Part 5. Employee Benefit/Leave Policies" of the City's Personnel and Procedures Manual is attached hereto and incorporated herein as Exhibit B.

14. Pursuant to the City of Springdale's Benefits Manual, the City of Springdale pays Seventy Percent (70%) of the premium costs associated with this health insurance, and the employee pays the remaining Thirty Percent (30%) through payroll deductions. A true and correct copy of this Benefits Manual is attached hereto and incorporated herein as Exhibit C.

15. Members of the Springdale City Council are not regular employees and do not work an average of Thirty (30) hours or more per week for the City of Springdale.

16. In 2005, Defendant Mike Overton was elected as a member of the Springdale City Council and has served as such since that time.

17. In 2007, Defendant Mike Overton became insured under the health insurance policy provided by the City of Springdale.

18. Since 2007, the City of Springdale has paid approximately Eleven Thousand, Five Hundred, Seventy-eight Dollars and Forty Cents (\$11,578.40) on behalf of Defendant Mike Overton, representing Seventy Percent (70%) of the total premium costs associated with health insurance provided to Defendant Mike Overton. A true and correct copy of the Health Insurance Paid on behalf of each Separate Defendant is attached hereto and incorporated herein as Exhibit D, as provided by the Springdale City Clerk, Denise Pearce, pursuant to a Freedom of Information Request filed by Plaintiff Anita Davis.

19. In 2007, Defendant Jim Reed was elected as a member of the Springdale City Council and has served as such since that time.

20. In 2007, Defendant Jim Reed became insured under the health insurance policy provided by the City of Springdale.

21. Since 2007, the City of Springdale has paid approximately Thirteen Thousand, Two Hundred, Seven Dollars and Fifty Cents (\$13,207.50) on behalf of Defendant Jim Reed, representing Seventy Percent (70%) of the total premium costs associated with this health insurance provided to Defendant Jim Reed. See attached Exhibit D.

22. In 1997, Defendant Bobby Stout was elected as a member of the Springdale City Council and has served as such since that time.

23. In 2006, Defendant Bobby Stout became insured under the health insurance policy provided by the City of Springdale.

24. Since 2006, the City of Springdale has paid approximately Twenty-one Thousand, Three Hundred, Twenty-four Dollars and Seventy-six Cents (\$21,324.76) on behalf of Defendant Bobby Stout, representing Seventy Percent (70%) of the total premium costs associated with this health insurance provided to Defendant Bobby Stout. See attached Exhibit D.

25. In 1999, Defendant Jeff Watson was elected as a member of the Springdale City Council and has served as such since that time.

26. In 2007, Defendant Jeff Watson became insured under the health insurance policy provided by the City of Springdale.

27. Since 2007, the City of Springdale has paid approximately Nineteen Thousand, Fifty-two Dollars and Four Cents (\$19,052.04) on behalf of Defendant Jeff Watson, representing Seventy Percent (70%) of the total premium costs associated with this health insurance provided to Defendant Jeff Watson. See attached Exhibit D.

IV. ILLEGAL EXACTION

28. The funds used to pay the insurance premiums of the Separate Defendants, Mike Overton, Jim Reed, Bobby Stout, and Jeff Watson were generated from tax dollars or otherwise arose from taxation.

29. There is no City Ordinance granting the City of Springdale or the Springdale City Council the power to provide health insurance coverage for non-employee, elected officials.

30. There is no Arkansas law granting the City of Springdale or the Springdale City Council the power to provide health insurance coverage for non-employee, elected officials.

31. The payment of health insurance premiums, by the City of Springdale, on behalf of the Separate Defendants, Mike Overton, Jim Reed, Bobby Stout, and Jeff Watson, amounts to illegal exaction under Art. 16, § 13 of the Constitution of Arkansas.

32. The payment of health insurance premiums, by the City of Springdale, on behalf of the Separate Defendants, Mike Overton, Jim Reed, Bobby Stout, and Jeff Watson, inured to the personal benefits of the Separate Defendants by way of compensation.

33. As a recipient of illegal and unauthorized benefits, Separate Defendant Mike Overton should be required to refund the premium amounts paid by the City of Springdale on his behalf in an amount of Eleven Thousand, Five Hundred, Seventy-eight Dollars and Forty Cents (\$11,578.40).

34. As a recipient of illegal and unauthorized benefits, Separate Defendant Jim Reed should be required to refund the premium amounts paid by the City of Springdale on his behalf in an amount of Thirteen Thousand, Two Hundred, Seven Dollars and Fifty Cents (\$13,207.50).

35. As a recipient of illegal and unauthorized benefits, Separate Defendant Bobby Stout should be required to refund the premium amounts paid by the City of Springdale on his behalf in an amount of Twenty-one Thousand, Three Hundred, Twenty-four Dollars and Seventy-six Cents (\$21,324.76).

36. As a recipient of illegal and unauthorized benefits, Separate Defendant Jeff Watson should be required to refund the premium amounts paid by the City of Springdale on his behalf in an amount of Nineteen Thousand, Fifty-two Dollars and Four Cents (\$19,052.04).

37. The recovery of monies for Plaintiffs from the Separate Defendants, Mike Overton, Jim Reed, Bobby Stout, and Jeff Watson, are refunds pursuant to Ark. Code Ann. § 26-35-902, and also a common fund, both of which are subject to apportionment of a reasonable and adequate attorney's fee.

WHEREFORE, Plaintiffs pray that Notice be given to the class by publication in a newspaper of general circulation in Washington County; that all health insurance premiums paid by the City of Springdale on behalf of the Separate Defendants be declared illegal and ultra vires; that all health insurance premiums paid by the City of Springdale on behalf of the Separate Defendants be refunded as illegal exactions; that Plaintiffs' counsel recover reasonable and adequate attorneys' fees under Ark. Code Ann. § 26-35-902 as a common fund recovery ; that Plaintiffs recover their costs; and that this Court retain jurisdiction for administration of the refund process, together with any and all other relief.

Anita Davis

BY:



Brian L. Campbell #2007069
DAVIS AND ASSOCIATES, P.A.
120 N. Commercial
P.O. Drawer 6
Springdale, Arkansas 72765-0006

